

AMENDED IN ASSEMBLY AUGUST 8, 2006

AMENDED IN ASSEMBLY MAY 31, 2006

AMENDED IN SENATE APRIL 19, 2006

AMENDED IN SENATE APRIL 17, 2006

SENATE BILL

No. 1818

**Introduced by Senator Alarcon
(Coauthor: Senator Florez)**

February 24, 2006

An act to add *and repeal* Section 801 to the Government Code, relating to attorney's fees.

LEGISLATIVE COUNSEL'S DIGEST

SB 1818, as amended, Alarcon. Attorney's fees.

Existing law provides that in any civil action to appeal or review the award, finding, or other determination of any administrative proceeding, except as specified, where it is shown that the award, finding, or other determination of the proceeding was the result of arbitrary or capricious action or conduct by a public entity or an officer thereof in his or her official capacity, the complainant, if he or she prevails in the civil action, may collect reasonable attorney's fees, as specified.

This bill would ~~provide that, until January 1, 2010, require the court to award attorney's fees and other litigation expenses to a local governmental entity, as specified, in any civil action brought by a big box retailer, as defined, to challenge the validity or application of an ordinance, rule, regulation, or initiative measure regulating zoning that is adopted by any local government entity, the court shall award attorney's fees and other litigation expenses to the local governmental~~

entity if the local governmental entity is the prevailing party and the court finds that the big box retailer ~~acted in an arbitrary or capricious manner in bringing the action~~ *commenced or maintained the action to intimidate the local governmental entity and that the big box retailer has a history of intimidating lawsuits or repeated sanctions or fines in the previous 5 years, as specified.* The bill would provide that these provisions shall apply to any litigation pending on or after April 19, 2006. *The bill would require the State Bar of California to study and report to the Legislature by January 1, 2009, regarding the frequency of intimidating lawsuits and the improper litigation practices of big box retailers, as specified.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 801 is added to the Government Code,
2 to read:

3 801. (a) In any civil action brought by a big box retailer to
4 challenge the validity or application of an ordinance, rule,
5 regulation, or initiative measure regulating zoning that is adopted
6 by any local ~~government entity~~ *governmental entity whose*
7 *current financial resources to defend against the action,*
8 *excluding its authority to increase taxes, are less than one-third*
9 *of the financial resources available to the big box retailer to*
10 *commence and maintain the action,* the court shall award
11 attorney's fees and other litigation expenses to the local
12 governmental entity if ~~both~~ *all* of the following apply:

13 (1) The local governmental entity is the prevailing party.

14 (2) The court finds that the big box retailer ~~acted in an~~
15 ~~arbitrary or capricious manner in bringing the action.~~ *commenced*
16 *or maintained the action to intimidate the local governmental*
17 *entity to abandon its zoning decision because of the retailer's*
18 *substantially greater financial resources to conduct the*
19 *litigation.*

20 (3) *The court finds that the big box retailer has a history of*
21 *intimidating lawsuits as described in paragraph (2) in the*
22 *previous five years or in that period has repeatedly been*
23 *sanctioned or fined for improper conduct in litigation or for a*
24 *violation of a court order.*

1 (b) For purposes of this section, “big box retailer” has the
2 same meaning as defined in Section 53084.

3 (c) This section shall apply to any litigation pending on or
4 after April 19, 2006.

5 (d) *The State Bar of California shall study and report to the*
6 *Legislature on or before January 1, 2009, regarding the*
7 *frequency of intimidating lawsuits and the improper litigation*
8 *practices of big box retailers operating in the state, including,*
9 *but not limited to, any sanctions or fines awarded by any court*
10 *against a big box retailer for improper conduct in litigation or*
11 *for a violation of a court order.*

12 (e) *This section shall remain in effect only until January 1,*
13 *2010, and as of that date is repealed, unless a later enacted*
14 *statute, that is enacted before January 1, 2010, deletes or extends*
15 *that date.*